



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** House of Communications & Graphics

**File:** B-245920.2

**Date:** March 4, 1992

Terrence M. O'Connor, Esq., for the protester.  
Susan A. McNary, Esq., Government Printing Office, for the agency.  
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Michael R. Golden, Esq., Office of the General Counsel, GAO,  
participated in the preparation of the decision.

### DIGEST

Protest against contracting officer's negative responsibility determination is denied where the determination was based on the protester's failure of a preaward test, and the record contains documentation that provides a reasonable basis for the negative test results and the resultant contracting officer's determination.

### DECISION

House of Communications & Graphics (HCG) protests the rejection of its bid under an invitation for bids (IFB) designated as Program D323-M, issued by the Government Printing Office (GPO) for the printing of forms, statistical drafting, and text composition for various government departments and agencies. HCG contends that the determination that it was nonresponsible was not reasonable.

We deny the protest.

The IFB was issued on July 25, 1991. The requirement was divided into two categories. Category I was for forms composition and Category II was for text composition. Category II also required statistical drafting of graphs and charts. The IFB provided that bids could be submitted on either or both categories. Multiple awards for a 1-year period were to be made for both categories. The IFB required, as part of the agency's responsibility determination, that bidders, who had not previously performed "on this contract," successfully complete a preaward test. Under the preaward test, bidders would be supplied with several pages of manuscript copy and would be required to produce up to 20 pages of typeset camera copy in

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accordance with furnished instructions as part of a four-part (text matter; tabular matter; government form; statistical drafting) test. The manuscript a bidder would be given might include "a typical form, a table, statistical draft material, and text matter depending on the category in which the contractor is bidding." The sample pages produced by the bidder for the purposes of the test would be inspected for "accuracy of proofreading, quality of materials and workmanship, as well as to determine the contractor's ability to interpret and follow instructions that are marked on the copy." Bidders who were unable to meet the test schedule or the test requirements would be found nonresponsible.

Twenty-three bids were received for Category I work and 21 bids were received for Category II work by bid opening on August 23. Since HCG was the low bidder on both categories, and it had not previously performed this work, it was required to take the four-part preaward test. The agency found major discrepancies in the sample submitted by HCG, and, consequently, GPO determined HCG to be nonresponsible for the failure to demonstrate successfully that it had the ability to perform the work required under the IFB. In a protest filed with our Office on September 30, HCG objected to the test results and the nonresponsibility determination. HCG subsequently withdrew its protest after GPO agreed to allow HCG to take another preaward test for the one test HCG did not perform satisfactorily and award HCG a contract for the program, if HCG passed the test. GPO reviewed HCG's test sample and again found that HCG failed to establish its ability to perform the contract work. The evaluation showed that HCG's test material was unacceptable for seven reasons: (1) the image size should have been 47 x 64 picas not 47-1/2 x 65-1/2 picas; (2) the head and foot margins were too tight; (3) the density of the reproduction proof was far too heavy; (4) the typefaces were not crisp and letters were rounded and filled in; (5) all rules were too heavy; (6) one pica typewriter spacing was not maintained; and (7) information, including a line of text, was missing from the submitted material. HCG was, consequently, determined to be nonresponsible, and its bid was rejected.

HCG protests the determination of nonresponsibility and maintains it was unreasonable because it was based on a preaward test that was not properly administered. HCG argues that the IFB did not establish a grading system or level-of-performance standard against which a bidder's test submissions would be measured. Thus, according to HCG, a bidder neither knew what constituted a passing grade nor which errors would be considered minor and which errors

would be considered material. HCG contends that this lack of a standard for passing the test made the administration of the test arbitrary.

The preaward testing required under this IFB was clearly related to the bidder's responsibility. A contracting agency has broad discretion in making responsibility determinations since it must bear the brunt of difficulties experienced in obtaining the required performance. Responsibility determinations are of necessity a matter of business judgment and such judgments must, of course, be based on fact and reached in good faith. Automated Datatron Inc., 68 Comp. Gen. 89 (1988), 88-2 CPD ¶ 481. Consequently, we will not question a nonresponsibility determination unless the record shows that there was a lack of any reasonable basis for the determination. EPCo Assocs., B-238015, Apr. 13, 1990, 90-1 CPD ¶ 388. Based on the stated IFB test criteria, HCG failed to demonstrate, among other things, accurate proofreading skills in that, for example, the firm left out a line of text and the ability to produce quality workmanship. The protester does not argue that the defects found in its work did not exist. Under these circumstances, we cannot say that the agency's determination was unreasonable nor does the protester establish otherwise.

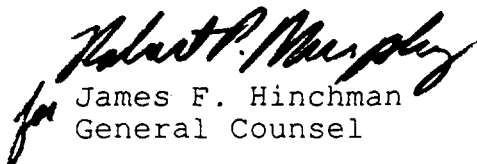
HCG does not argue that the deficiencies the agency found do not exist. Nor does it argue that they might not be considered material. Instead, it simply argues that the IFB did not spell out what mistakes would not be acceptable, how many mistakes had to occur before the test materials would be found unacceptable, and that the IFB did not set out some standard for determining the bidder's responsibility. Even if we considered the standard as applied unreasonable, which we do not, HCG's objection that the IFB did not adequately define the standard for passing the preaward test concerns an alleged solicitation impropriety apparent from the face of the solicitation and had to be raised prior to bid opening. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1991), as amended by 56 Fed. Reg. 3759 (1991).

HCG also argues that GPO relaxed the testing requirement when it permitted another bidder to qualify based on its successful performance of "related government contracts"--presumably a contract with GPO in Boston--under the IFB's requirement for a preaward test for all bidders who have not previously performed "on this contract." In its comments to the agency report submitted in response to the protest, HCG for the first time states that in August 1991 it told GPO, prior to GPO first requesting that a test be conducted, that it had successfully performed an Internal Revenue Service

(IRS) forms composition contract issued by the GPO in Hampton, Virginia, during the period of February 1990 through February 1991. HCG maintains that since the test requirement was not waived for it, it was treated differently than the bidder who was awarded a contract.

HCG may not maintain a protest on the basis that one awardee was improperly permitted to forego the preaward testing on the basis of prior satisfactory performance of "related government contracts." A bidder that has been found nonresponsible and is, therefore, not eligible for award is not an interested party to maintain a protest. 4 C.F.R. § 21.0 (a) (1991); Stemaco Prod., Inc., B-243206, Mar. 27, 1991, 91-1 CPD ¶ 333. HCG was unable to pass the preaward testing conducted for this procurement. The fact that HCG may have in the past satisfactorily performed a similar contract for GPO does not negate HCG's repeated failure to pass the tests under this IFB. Since HCG was properly found to be nonresponsible and, therefore, ineligible for award on this procurement, it is not an interested party to challenge the award. Id.

The protest is denied.

  
for James F. Hinchman  
General Counsel